

Feb 28, 2025

STATE OF FLORIDA  
DEPARTMENT OF CHILDREN AND FAMILIES  
OFFICE OF APPEAL HEARINGS

Office of Appeal Hearings  
Dept. of Children and Families

[REDACTED]

APPEAL NO. 24N-00127

PETITIONER,

VS.

ADMINISTRATOR

[REDACTED]

RESPONDENT.

\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, the undersigned convened a nursing home discharge hearing in the above-referenced matter on January 31, 2025, at 12:07 p.m. at [REDACTED]

[REDACTED]

**APPEARANCES**

For Petitioner: [REDACTED] pro se

For Respondent: [REDACTED], Nursing Home Administrator

**STATEMENT OF ISSUE**

Petitioner appeals Respondent's action discharging Petitioner from Aspire at Brooksville Rehabilitation Center (the "Facility"). Respondent carries the burden of proof by clear and convincing evidence.

**SUMMARY OF PROCEEDINGS**

Five witnesses appeared on behalf of the Facility who provided testimony:

[REDACTED], In-house Nurse Practitioner (Resp't Wit. 1), [REDACTED], Director of

Nursing (Resp't Wit. 2), [REDACTED], Assistant Director of Nursing (Resp't Wit. 3), [REDACTED], Licensed Practical Nurse, B-Wing Unit Manager (Resp't Wit. 4), [REDACTED], Primary Care Provider (Resp't Wit. 5).

Petitioner submitted no evidence for review or consideration.

Respondent submitted sixteen exhibits, which were entered into evidence as Respondent's Exhibit one ("1") through sixteen ("16").

### **Petitioner's Position**

Petitioner took the position that he doesn't consider himself as independent. Petitioner argued he still requires assistance for his activities of daily living. Petitioner contends he's fallen on multiple occasions; however, these falls were not reported to staff at Facility. Petitioner argues, that while he can get around using his wheelchair and is able to stand, he cannot walk independently. Petitioner argued he considers himself semi-independent as he still needs assistance from the Facility and needs that and additional time to get better.

### **Respondent's Position**

Respondent took the position that Petitioner was initially admitted to the facility for short term care. Petitioner's main mode of transportation is his wheelchair; however, he self-propels himself throughout the facility and to carry out his daily living activities, to include shopping for personal items. Respondent argued Petitioner is independent with set ups for meals, transfers to and from his wheelchair, hygiene, toileting and showering. Respondent argued Petitioner's is high functioning with activities of daily living and medication administration; therefore, he no longer requires twenty-four-hour long-term care ("LTC"). Respondent contends Petitioner level of independence is such that he is able to reside in an Assisted Living Facility ("ALF").

### **FINDINGS OF FACT<sup>1</sup>**

Based on the oral and documentary evidence presented at the final hearing and on the entire record of this proceeding, the following findings of fact are made:

1. The Facility is a long-term care center that offers skilled nursing and rehabilitation services. (Hr'g R.)
2. Petitioner was admitted to the Facility on December 4, 2021. Petitioner was admitted with calculus of the kidney, anemia, hypothyroidism, chronic fatigue, restlessness and agitation, a medical history of skin cancer, hypertension, constipation, major depression, mood disorder, insomnia, and dermatitis. (Resp't Ex. 5.)
3. On November 14, 2024, a Nursing Home Discharge Notice ("Notice") was issued to Petitioner, with an effective date of December 14, 2024, stating "Your health has improved sufficiently so that you no longer need the services provided by the facility". (Resp't Ex. 3.)
4. Petitioner is alert and orient and can make his needs known. Petitioner's primary mode of transportation is a wheelchair, which he uses to self-propel himself throughout the facility, to and from the [REDACTED], which is approximately 0.2 miles away, and to and from the bus stop to take public transportation to [REDACTED] to independently shop for his personal needs. (Resp't Wit. 2; Resp't Wit. 3; Resp't Wit 4)
5. The Primary Care Provider in the Facility is aware of Petitioner aware of Petitioner's medical treatments for Petitioner's physical and diagnosis condition, he independently self-administers his medications and Nebulizer treatments. (Resp't E. 6:

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<sup>1</sup> Citations within the Findings of Fact and Conclusions of Law in this order follow Florida Rule of Appellate Procedure 9.800 and *The Bluebook: A Uniform System of Citation* as the standard for citation.

Hr'g. R.) With minimal set-up assistance, Petitioner independently eats his meals, opens containers and condiments, and completes lower body hygiene. With limited assistance and verbal clues, Petitioner toilets and showers independently. (Resp't Wit. 3; Resp't Ex. 8.)

6. Respondents' witnesses have observed Petitioner's behavior and movements, standing, sweeping, bending to scoop of trash, reaching snowflakes from the ceiling, hanging menus, and taking public transportation, returning from [REDACTED] with multiple shopping bags. Petitioner has not been observed walking. (Hr'g R.)

### **CONTROLLING LAW**

7. Section 400.0255(15), Florida Statutes, provides the Department of Children and Families, Office of Appeal Hearings, jurisdiction over the subject matter of this proceeding and the parties. This section further prescribes this order as the final administrative decision of the Department of Children and Families.

8. Section 400.0255, Florida Statutes addresses Resident transfer or discharge; requirements and procedures; hearings and states in part:

...  
(3) When a discharge or transfer is initiated by the nursing home, the nursing home administrator employed by the nursing home that is discharging or transferring the resident... must sign the notice of discharge or transfer. Any notice indicating a medical reason for transfer or discharge must either be signed by the resident's attending physician or the medical director of the facility, or include an attached written order for the discharge or transfer. The notice or the order must be signed by the resident's physician, medical director, treating physician, nurse practitioner, or physician assistant...

(15)(b) The department shall, by rule, establish procedures to be used for fair hearings requested by residents. These procedures shall be equivalent to the procedures used for fair hearings for other Medicaid cases, chapter 10-2, part VI, Florida Administrative Code. The burden of proof must be clear and convincing evidence.

9. Title 42 Code of Federal Regulations Section 483.15 sets forth the reasons a facility may involuntarily discharge a resident as follows: Admission, transfer and discharge rights.

(c) Transfer and discharge—(1) Facility requirements—(i) The facility must permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless—

...

**(B) The transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility;** (emphasis added)

10. Section 90.803(6), Florida Statutes, Hearsay exceptions; availability of declarant immaterial. —The provision of s. 90.802 to the contrary notwithstanding, the following are not inadmissible as evidence, even though the declarant is available as a witness:

...

(6) RECORDS OF REGULARLY CONDUCTED BUSINESS ACTIVITY.—

(a) A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinion, or diagnosis, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity and if it was the regular practice of that business activity to make such memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, or as shown by a certification or declaration that complies with paragraph (c) and s. 90.902(11), unless the sources of information or other circumstances show lack of trustworthiness. The term “business” as used in this paragraph includes a business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

(b) Evidence in the form of an opinion or diagnosis is inadmissible under paragraph (a) unless such opinion or diagnosis would be admissible under ss. 90.701-90.705 if the person whose opinion is recorded were to testify to the opinion directly.

(c) A party intending to offer evidence under paragraph (a) by means of a certification or declaration shall serve reasonable written notice of that intention upon every other party and shall make the evidence available for inspection sufficiently in advance of its offer in evidence to provide to any other party a fair opportunity to challenge the admissibility of the evidence. If the evidence is maintained in a foreign country, the party intending to offer the evidence must provide written notice of that intention at the arraignment or as

soon after the arraignment as is practicable or, in a civil case, 60 days before the trial. A motion opposing the admissibility of such evidence must be made by the opposing party and determined by the court before trial. A party's failure to file such a motion before trial constitutes a waiver of objection to the evidence, but the court for good cause shown may grant relief from the waiver.

### **CONCLUSIONS OF LAW**

11. The above-cited authorities set-forth the nursing facility discharge process.

In this instant case, the medical reason Petitioner is being discharged for is Respondent believes Petitioner's health has improved sufficiently so that he no longer requires the services provided by the facility. Petitioner's medical doctor signed the Notice.

12. The above authority explains that the Facility must ensure that the transfer discharge is documented in Petitioner's medical record when the reason for transfer discharge is "Your health has improved sufficiently so that you no longer need services provided by this facility".

13. The findings show Petitioner has many medical conditions and has been receiving services since admittance in December 2021. The Primary Care Provider for the Facility testified her notes, indicates her observation and interaction with Petitioner. In her professional opinion, the medical conditions Petitioner has can be managed outside of the Facility, Petitioner has reached maximum functional potential and is appropriate for assisted living facility level of care and has exhibited the ability to complete activities of daily living with limited assistance. The undersigned concludes, the Primary Care Provider for the Facility testimony and her notes meets the Business Record exception to the hearsay rule as set forth in Section 90.803(6), Florida Statutes, and qualifies as a self-authenticating business record.

14. After a review of the evidence, testimony and pertinent rules and regulations, the undersigned concludes that while Petitioner has not been observed walking, he has been observed self-propelling himself to and from the store to independently complete shopping for personal needs, he is capable of eating, showering, toileting and transferring himself from his wheelchair to the bed with minimal assistance. Petitioner no longer requires the twenty-four-hour long-term care of the facility. The continued improvement of his health issues can be achieved outside of the facility.

15. Establishing that the reason for a discharge is lawful is just one step in the discharge process. The Facility must also provide discharge planning, which includes identifying an appropriate transfer or discharge location and sufficiently preparing the resident for a safe and orderly transfer or discharge from the Facility. The undersigned cannot and has not considered either of these issues. The undersigned has considered only whether the discharge is for a lawful reason.

16. Any discharge by the Facility must comply with all applicable federal regulations, Florida Statutes, and AHCA requirements. Should the resident have concerns about the appropriateness of the discharge location or the discharge planning process, the resident may contact the AHCA's health care facility complaint line at (888) 419-3456.

17. Based on the evidence and testimony, based on the expert opinion of Petitioner's primary care physician and nurse practitioners, Petitioner's health conditions for which he was initially admitted into the facility "has improved sufficiently so that you no longer need the services provided by the facility". This is one of the six (6) reasons provided in federal regulation Title 42 C.F.R. § 483.15 for which a nursing facility may involuntarily discharge a resident. Respondent has met its burden of proof.

**DECISION**

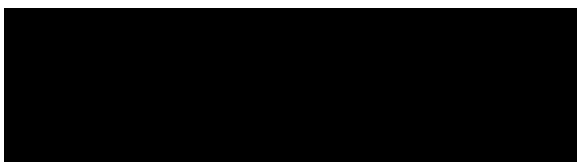
Based on the foregoing Findings of Fact, Controlling Law and Conclusions of Law, this appeal is DENIED. The Facility's action to discharge Petitioner is in accordance with Federal Regulations. The Facility may proceed with its proposed discharge action, as described in the Conclusions of Law and in accordance with all applicable AHCA requirements.

**NOTICE OF RIGHT TO APPEAL**

The decision of the hearing officer is final. Any aggrieved party may appeal the decision to the district court of appeals in the appellate district where the Facility is located. Review procedures shall be in accordance with the Florida Rules of Appellate Procedure. To begin the judicial review, the party must file one copy of a "Notice of Appeal" with the Office of Appeal Hearings, Suite I, Room 129, 2415 North Monroe Street, Tallahassee, FL 32303-4190. The party must also file another copy of the "Notice of Appeal" with the appropriate District Court of Appeal. The Notices must be filed within thirty (30) days of the date stamped on the first page of the final order. Petitioner must either pay the court fees required by law or seek an order of indigency to waive those fees. The Department has no funds to assist in this review, and any financial obligations incurred will be the party's responsibility.

DONE and ORDERED this  28  day of  February , 2025,

in Tallahassee, Florida.



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, Respondent  
Agency for Health Care Administration

STATE OF FLORIDA  
DEPARTMENT OF CHILDREN AND FAMILIES  
OFFICE OF APPEAL HEARINGS

[REDACTED]

PETITIONER,

APPEAL NO. 24N-00127

Vs.

FLORIDA DEPT OF CHILDREN AND FAMILIES  
CIRCUIT: 05 Hernando

CASE NO.

RESPONDENT.

**CERTIFICATE OF SERVICE**

This is to certify that a copy of the attached notice or order was provided to Petitioner at the above address and to the following individuals by either regular U.S. or electronic mail:

**I HEREBY CERTIFY** that these copies were furnished on February 28, 2025.

[REDACTED]

Agency Clerk, Office of Appeal Hearings  
Department of Children and Families  
Suite I, Room 129, 2415 North Monroe Street, Tallahassee, FL 32303-4190